Ketua Pengarah Pertubuhan Keselamatan Sosial v Wong Ton Feng

HIGH COURT (SHAH ALAM) — CIVIL APPEAL NO BA-16–17–06 OF 2019
WONG KIAN KHEONG J
6 JULY 2020

Family Law — Marriage — Customary marriage — Respondent's marriage under Chinese customary marriage was not registered — Whether respondent entitled to survivor pension under Social Security Organization ('SOCSO') — Whether wife of insured person was a dependant of insured person within meaning of s 2(3) of Employee's Social Security Act 1969 ('ESSA') — Whether provisions in Law Reform (Marriage and Divorce) Act 1976 had any effect on interpretation of term dependant — Employee's Social Security Act 1969 s 2(3) — Law Reform (Marriage and Divorce) Act 1976 ss 5(4), 22(4) & 27

Civil Procedure — Judgment — Federal Court delivered decision without written judgment — Whether Federal Court's decision without written judgment was binding precedent under stare decisis doctrine

On 18 December 2004, the respondent was married to the late Mr Wong Thien Teck ('the deceased') by way of a Chinese customary marriage ('the marriage'). The marriage was not registered under the Law Reform (Marriage and Divorce) Act 1976 ('the LRA'). The deceased collapsed and died due to non-traumatic subarachnoid hemorrhage, a type of stroke. As a widow of the deceased, the respondent claimed for a survivor's pension ('the claim') from the Social Security Organization ('SOCSO') under s 20A(1)(a) of the Employees' Social Security Act 1969 ('the ESSA'). SOCSO dismissed the claim on the sole ground that the marriage was not registered under LRA ('SOCSO's decision'). As such, the respondent appealed to the Social Security Appellate Board ('the Board') against SOCSO's decision. The respondent's appeal was allowed by the Board. The present appeal was against the Board's decision pursuant to s 91(1) of the ESSA. The present appeal raised the sole issue of whether the wife of an insured person as defined in s 2(11) of the ESSA was a dependant of the insured person within the meaning of s 2(3) of the ESSA when their marriage was not registered under the LRA. The others issues were: (a) whether ss 5(4), 22(4) and 27 LRA had any effect on the interpretation of the term dependant in s 2(3) ESSA; and (b) from the view point of the stare decisis doctrine, what was the effect of a decision of the Federal Court which reversed the Court of Appeal's judgment but there was no written judgment of the Federal Court.

Held, dismissing appeal with costs and affirming the Board's decision:

(1) A literal interpretation of the definition of 'dependant' in s 2(3) of the ESSA did not support the mandatory registration (non-Muslim marriages). This literal construction of the meaning of 'dependant' in s 2(3) of the ESSA was clear. Parliament had amended the definition of dependant in s 2(3) ESSA as in Act A450, Act A675, Act A814 and Act A1232. If Parliament had intended to insert the mandatory registration for non-Muslim marriages in the definition of dependant in s 2(3) of the ESSA, Parliament would have expressly done so by way of any one of the four amendments. Parliament however did not do so. The ESSA was a social piece of legislation with the purpose of providing social security in certain contingencies. A purposive interpretation of the definition of dependant in s 2(3) of the ESSA did not require the imposition of the mandatory registration for non-Muslim marriages (see paras 15–17).

(2) The court of the view that SOCSO's reliance on ss 5(4), 22(4) and 27 of the LRA was misplaced. The LRA was only concerned with the matters of the requirement of monogamous non-Muslim marriages; the solemnisation of non-Muslim marriages; the mandatory registration of non-Muslim marriages; and the amendments and consolidation of the law relating to divorce among non-Muslims and there was no provision in LRA regarding social security. It was therefore clear that the LRA did not concern with social security which was provided by ESSA and cases decided regarding LRA were not applicable in the construction of the definition of 'dependant' in s 2(3) of the ESSA (see paras 19–20).

(3) When a court delivered a decision but there was no written judgment regarding the decision, the decision was not a binding precedent under the stare decisis doctrine as decided in *Syahin Hafiy Danial bin Soh Ahmad Luptepi Amin v Mansur bin Yunus & Anor* [2019] MLJU 914 (see para 24).

[Bahasa Malaysia summary

Pada 18 Disember 2004, responden telah berkahwin dengan mendiang Wong Thien Teck ('si mati') melalui perkahwinan adat orang Cina ('perkahwinan tersebut'). Perkahwinan tersebut tidak didaftarkan di bawah Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('AMU'). Si mati rebah dan meninggal dunia kerana pendarahan subarachnoid bukan trauma, sejenis strok. Sebagai janda si mati, responden menuntut pencen penakat ('tuntutan tersebut') dari Pertubuhan Keselamatan Sosial ('PERKESO') di bawah s 20A(1)(a) Akta Keselamatan Sosial Pekerja 1969 ('AKSP'). PERKESO menolak tuntutan dengan alasan bahawa perkahwinan tersebut tidak didaftarkan di bawah AMU ('keputusan PERKESO'). Oleh yang demikian, responden mengemukakan rayuan kepada Lembaga Rayuan Keselamatan Sosial ('Lembaga tersebut') terhadap keputusan PERKESO. Rayuan

responden dibenarkan oleh Lembaga tersebut. Rayuan semasa adalah terhadap keputusan Lembaga berdasarkan s 91(1) AKSP. Rayuan semasa membangkitkan satu-satunya persoalan sama ada isteri orang yang diinsuranskan seperti yang diperuntukkan dalam s 2(11) AKSP adalah bertanggungan pada orang yang diinsuranskan dalam definisi s 2(3) AKSP apabila perkahwinan mereka tidak didaftarkan di bawah AMU. Isu-isu lain adalah: (a) sama ada ss 5(4), 22(4) dan 27 AKSP mempunyai kesan terhadap penafsiran istilah bergantungan dalam s 2(3) AKSP; dan (b) dari sudut pandang doktrin stare decisis, apakah kesan keputusan Mahkamah Persekutuan yang mengakaskan keputusan Mahkamah Rayuan tetapi tidak ada keputusan bertulis oleh Mahkamah Persekutuan.

Diputuskan, menolak rayuan dengan kos dan mengesahkan keputusan Lembaga:

(1) Penafsiran secara literal mengenai definisi 'bergantungan' dalam s 2(3) AKSP tidak menyokong Pendaftaran Wajib (Perkahwinan Bukan Islam). Pembuatan secara literal makna 'bergantungan' dalam s 2(3) AKSP adalah jelas. Parlimen telah meminda definisi bertanggungan dalam s 2(3) AKSP seperti dalam Akta A450, Akta A675, Akta A814 dan Akta A1232. Sekiranya Parlimen bermaksud memasukkan pendaftaran wajib untuk perkahwinan bukan Islam dalam definisi bertanggungan dalam s 2(3) AKSP, Parlimen akan secara tegas melakukannya dengan salah satu dari empat pindaan tersebut. Parlimen bagaimanapun tidak berbuat demikian. AKSP adalah undang-undang sosial yang bertujuan untuk memberikan jaminan sosial dalam keadaan luar biasa. Tafsiran secara bertujuan bagi definisi bertanggungan dalam s 2(3) AKSP tidak memerlukan pengenaan pendaftaran wajib untuk perkahwinan bukan Islam (lihat perenggan 15–17).

(2) Mahkamah berpendapat bahawa pergantungan PERKESO pada ss 5(4), 22(4) dan 27 AMU adalah terkhilaf. AMU hanya berkaitan dengan perkara-perkara mengenai syarat perkahwinan bukan Islam secara monogami; pelaksanaan perkahwinan bukan Islam; pendaftaran wajib perkahwinan bukan Islam; dan pindaan dan penggabungan undang-undang yang berkaitan dengan perceraian di kalangan orang bukan Islam dan tidak ada peruntukan dalam AMU mengenai keselamatan sosial. Oleh itu, jelas bahawa AKSP tidak berkaitan dengan keselamatan sosial yang seperti yang diperuntukkan oleh AKSP dan kes-kes yang diputuskan mengenai AMU tidak boleh diguna pakai dalam pembuatan definisi 'bertanggungan' dalam s 2(3) AKSP (lihat perenggan 19–20).

(3) Apabila mahkamah membuat keputusan tetapi tidak ada keputusan bertulis mengenai keputusan tersebut, keputusan tersebut bukanlah preseden yang mengikat di bawah doktrin stare decisis seperti yang

diputuskan dalam *Syahin Hafiy Danial bin Soh Ahmad Luptepi Amin v Mansur bin Yunus & Anor* [2019] MLJU 914 (lihat perenggan 24).]

Cases referred to

Chai Siew Yin v Leong Wee Shing [2004] 1 CLJ 752, CA (refd)
Joremi bin Kimin & Anor v Tan Sai Hong [2001] 1 MLJ 268, CA (refd)
Ketua Pengarah Pertubuhan Keselamatan Sosial v Lam Kun Tai [2019] 6 AMR 154 (folld)
Koi Lean Hua v Ketua Pengarah Pertubuhan Keselamatan Sosial [2011] 1 LNS 878, HC (not folld)
Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 1 MLJ 719, CA (refd)
Patrick Ho Chang v Pertubuhan Keselamatan Sosial [2019] MLJU 1207; [2019] 7 AMR 468, HC (refd)
Rimmalapudi Subba Rao v Noony Veeraju & Ors AIR 1951 Mad 969, HC (refd)
Sundralingam v Ramanathan Chettiar [1967] 2 MLJ 211, FC (refd)
Syahin Hafiy Danial bin Soh Ahmad Luptepi Amin v Mansur bin Yunus & Anor [2019] MLJU 914, HC (refd)
Tan Siew Sen & Ors v Nick Abu Dusuki bin Haji Hassan & Anor [2016] 4 MLJ 602; [2016] MLJU 215, CA (refd)

Legislation referred to

Civil Law Act 1956 s 7(2)
Employees' Social Security Act 1969 ss 2(3), (11), 15(g), 20A(1), (1)(a), 91(1), (2)
Constitution of India [IND] art 133(1)
Law Reform (Marriage and Divorce) Act 1976 ss 5(4), 22(4), 27

Diba Natalia bt Ishak (Messrs Skrine) for the appellant.
Respondent appeared in person.

Wong Kian Kheong J:

BACKGROUND

[1] On 18 December 2004, the respondent ('respondent') was married to the late Mr Wong Thien Teck ('deceased') by way of a Chinese customary marriage ('the marriage').

[2] The marriage was not registered under the Law Reform (Marriage and Divorce) Act 1976 ('the LRA').

[3] When the deceased was working, he collapsed and died due to 'Non-traumatic Subarachnoid Hemorrhage' (a type of stroke).

[4] As a widow of the deceased, the respondent claimed for a 'survivor's pension' ('the claim') from the Social Security Organization ('SOCSO') under s 20A(1)(a) of the Employees' Social Security Act 1969 ('the ESSA').

[5] SOCSO dismissed the claim on the sole ground that the marriage was not registered under the LRA (SOCSO's decision). As such, the respondent appealed to the Social Security Appellate Board ('SSAB') against SOCSO's decision ('respondent's appeal').

[6] The respondent's appeal was allowed by SSAB ('SSAB's decision'). This is SOCSO's appeal to the High Court against SSAB's decision pursuant to s 91(1) of the ESSA ('this appeal').

[7] In this appeal, the respondent acted in person.

SOLE QUESTION

[8] This appeal raises the sole issue of whether the wife of an 'insured person' (as defined in s 2(11) of the ESSA) is a 'dependant' of the insured person within the meaning of s 2(3) of the ESSA when their marriage is not registered under the LRA ('sole issue'). In deciding the sole issue:

(a) whether ss 5(4), 22(4) and 27 of the LRA have any effect on the interpretation of the term 'dependant' in s 2(3) of the ESSA; and

(b) from the view point of the stare decisis doctrine, what is the effect of a decision of the Federal Court which has reversed the Court of Appeal's judgment but there is no written judgment of the Federal Court?

RELEVANT PROVISIONS OF THE ESSA AND LRA

[9] I reproduce below the title to ESSA (title (ESSA)), the definition of 'dependant' (s 2(3) of the ESSA), ss 15(g) and 20A(1) of the ESSA:

Title (ESSA) — An Act to provide social security in certain contingencies and to make provision for certain other matters in relation to it.

s 2 *In this Act unless there is anything repugnant in the subject or context —*

...

s 2(3) — *dependant means any of the following relatives of a deceased insured person, namely*:

(a) *a widow* or widower or a child; and

(b) *if there is no widow* or widower or child —

(i) a daughter, if married and a minor, or if widowed and a minor;

(ii) an unmarried minor brother or sister or a widowed minor sister;

(iii) a widowed daughter-in-law;

(iv) a minor child of a pre-deceased son;

(v) a minor child of a pre-deceased daughter where no father of the child is alive;

(vi) a parent; or

(vii) a grandparent if no parent of the insured person is alive;

s 15 *Benefits*

Subject to this Act, *the insured persons, their dependants* or the persons hereinafter mentioned, as the case may be, *shall be entitled to the following benefits*, namely:

...

(g) *periodical payments to dependants* of an insured person who dies while in receipt of invalidity pension, or *of an insured person who has not attained sixty years of age but has completed a full or reduced qualifying period for survivors' pension mentioned in subsections 17A(2) and (3) (hereinafter referred to as survivors' pension)*.

s 20A *Survivors' pension*

(1) *If an insured person* who is in receipt of invalidity pension, or if an insured person *who has not attained sixty years of age but has completed a full or reduced qualifying period as specified under section 17A, dies, survivors' pension at the rates specified in the Eighth Schedule shall be payable —*

(a) *to the widow* or the widower during life, and if there are two or more widows, the widow's share of survivors' pension specified in the *Eighth Schedule* shall be divided equally between the widows:

Provided that if a widow or widower is entitled to more than one survivors' pension, she or he shall be paid only one pension, being the pension with the higher rate.

(b) to each child until marriage or until he attains the age of twenty-one years, whichever occurs earlier:

Provided that in the case of a child referred to in paragraph (b) of the definition of child in *section 2*, survivors' pension shall continue to be paid so long as he is incapable of supporting himself:

And provided further that the Organization may continue such pension to a child who is in receipt of education in any institution of higher learning but not beyond the first degree until he completes or ceases to receive such education or until he marries, whichever occurs earlier. (Emphasis added.)

[10] The title to LRA (Title (LRA)), ss 5, 22(4) and 27 of the LRA state as follows:

Title (LRA) — An Act to provide for monogamous marriages and the solemnization and registration of such marriages; to amend and consolidate the law relating to divorce; and to provide for matters incidental thereto.

s 5 *Disability to contract marriages otherwise than under this Act*

(1) *Every person who on the appointed date is lawfully married under any law, religion,*

custom or usage to one or more spouses shall be incapable, during the continuance of such marriage or marriages, of contracting a valid marriage under any law, religion, custom or usage with any other person, whether the first mentioned marriage or the purported second mentioned marriage is contracted within Malaysia or outside Malaysia.

(2) *Every person who on the appointed date is lawfully married under any law, religion, custom or usage to one or more spouses and who subsequently ceases to be married to such spouse or all such spouses, shall, if he thereafter marries again, be incapable during the continuance of that marriage of contracting a valid marriage with any other person under any law, religion, custom or usage, whether the second mentioned marriage or purported third mentioned marriage is contracted within Malaysia or outside Malaysia.*

(3) *Every person who on the appointed date is unmarried and who after that date marries under any law, religion, custom or usage shall be incapable during the continuance of such marriage of contracting a valid marriage with any other person under any law, religion, custom or usage, whether the first mentioned marriage or the purported second mentioned marriage is contracted within Malaysia or outside Malaysia*.

(4) After the appointed date, no marriage under any law, religion, custom or usage may be solemnized except as provided in Part III.

s 22 *Solemnization of marriages*

(1) *Every marriage under this Act shall be solemnized —*

(a) in the office of a Registrar with open doors within the hours of six in the morning and seven in the evening;

(b) in such place other than in the office of a Registrar at such time as may be authorized by a valid licence issued under *subsection 21(3)*; or

(c) in a church or temple or at any place of marriage in accordance with *section 24* at any such time as may be permitted by the religion, custom or usage which the parties to the marriage or either of them profess or practise.

...

(4) *Every marriage purported to be solemnized in Malaysia shall be void unless a certificate for marriage or a licence has been issued by the Registrar or Chief Minister or a statutory declaration under subsection (3) has been delivered to the Registrar or Assistant Registrar, as the case may be*.

s 27 *Registration*

The marriage of every person ordinarily resident in Malaysia and of every person resident abroad who is a citizen of or domiciled in Malaysia after the appointed date shall be registered pursuant to this Act. (Emphasis added.)

SOCSO'S SUBMISSION

[11] In support of this appeal, Cik Diba Natalia bt Ishak (SOCSO's learned counsel) has advanced the following contentions:

(a) in the High Court case of *Koi Lean Hua v Ketua Pengarah Pertubuhan Keselamatan Sosial* [2011] 1 LNS 878, Hadhariah Syed Ismail JC (as

she then was) has decided that a widow is not a 'dependant' within the meaning of s 2(3) of the ESSA if her marriage is not registered under the LRA;

(b) ss 5(4), 22(4) and 27 of the LRA mandatorily require all non-Muslim marriages to be registered under the LRA (mandatory registration (non-Muslim marriages));

(c) as the marriage was not registered under the LRA, the respondent was not a 'lawful widow' of the deceased and consequently, the respondent was not the deceased's 'dependant' as understood in s 2(3) of the ESSA;

(d) the SSAB has erroneously relied on the Court of Appeal decisions in *Joremi bin Kimin & Anor v Tan Sai Hong* [2001] 1 MLJ 268 and *Chai Siew Yin v Leong Wee Shing* [2004] 1 CLJ 752 without taking into account that:

(i) the Court of Appeal's decision in *Chai Siew Yin* has been reversed by the Federal Court (*Chai Siew Yin* (FC's decision)); and

(ii) *Chai Siew Yin* (FC's decision) has been applied by the Court of Appeal in *Tan Siew Sen & Ors v Nick Abu Dusuki bin Haji Hassan & Anor* [2016] 4 MLJ 602; [2016] MLJU 215.

(e) Cik Diba has relied on an article written by Mr Balwant Singh Sidhu, 'Married or Not Married? — That is the Question' [2002] 3 MLJ cxxix (Mr Balwant's article) to support her submission regarding the mandatory registration (non-Muslim marriages).

THIS APPEAL CONCERNS 'SUBSTANTIAL QUESTION OF LAW'

[12] Sections 91(1) and (2) of the ESSA provide as follows:

s 91 *Appeal*

(1) *Save as expressly provided in this section, no appeal shall lie from an order of the appellate boards set up by or under this Act.*

(2) *An appeal shall lie to the High Court from an order of an appellate board set up by or under this Act if it involves a substantial question of law.* (Emphasis added.)

[13] In *Patrick Ho Chang v Pertubuhan Keselamatan Sosial* [2019] MLJU 1207; [2019] 7 AMR 468 , I have adopted the meaning of the phrase 'substantial question of law' in s 91(2) of the ESSA as explained by Rajamannar CJ in the Madras High Court in *Rimmalapudi Subba Rao v Noony Veeraju & Ors* AIR 1951 Mad 969, at [3], [8], [9] and [11] (regarding the meaning of the phrase 'substantial question of law' in art 133(1) of the Constitution of India). It is decided in *Patrick Ho Chang* , at [13(5)], as follows:

[13] *Based on ss 84(5), 91(1) and (2) ESSA, I am of the following view*:

A ...

(5) *I accept the interpretation of the phrase 'substantial question of law' given in Rimmalapudi Subba Rao. There can only be an appeal against a decision of the Appellate Medical Board to the High Court under s 91(1) and (2) ESSA if an appellant, be it a claimant or the 'Organization' [defined in s 2(16) ESSA as the Social Security Organization], can satisfy the High Court that the appeal involves a 'substantial question of law' as follows*:

B

(a) *an important question of law is involved*;

(b) *a difficult question of law arises in the appeal*;

C

(c) *if the question of law involved is neither important nor difficult, the question is nevertheless a substantial question of law if the question is arguable in the sense that*:

(i) *there is room for reasonable doubt on the question*; or

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(ii) *there is a difference of opinion on the question*;

(d) *when a particular set of facts can lead to alternative findings of law, a substantial question of law is involved*;

(e) *where a legal principle or rule to be applied in a case is not well established, there arises a substantial question of law; or*

E

(f) *if the appeal concerns*:

(i) *conflicting decisions of the High Court*; *or*

F

(ii) *conflicting judgments of the Court of Appeal on a question of law and there is no judgment of the Federal Court on the question, there is a substantial question of law involved in the appeal.*

I should add that the above examples of a 'substantial question of law' are not exhaustive; (Emphasis added.)

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[14] This appeal involves 'a substantial question of law' within the meaning of s 91(2) of the ESSA because:

(a) the sole issue is an important question of law regarding whether non-Muslim widows of insured persons are dependants as understood in s 2(3) of the ESSA when their marriages are not registered under LRA; and/or

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(b) there are conflicting High Court decisions regarding the sole issue. *Koi Lean Hua* has decided that a non-Muslim widow of an insured person is only recognized as a 'dependant' within the meaning of s 2(3) ESSA if her marriage is duly registered under LRA. Su Geok Yiam J has decided otherwise in *Ketua Pengarah Pertubuhan Keselamatan Sosial v Lam Kun Tai* [2019] 6 AMR 154.

I

WHETHER DEFINITION OF 'DEPENDANT' IN S 2(3) OF THE ESSA REQUIRES REGISTRATION OF MARRIAGE UNDER LRA

[15] Firstly, a literal interpretation of the definition of 'dependant' in s 2(3) of the ESSA does not support the mandatory registration (non-Muslim marriages). This literal construction of the meaning of 'dependant' in s 2(3) of the ESSA is clear from the following reasons:

(a) there is no express requirement in the definition of 'dependant' in s 2(3) of the ESSA that the marriage of a 'widow' has to be registered under LRA;

(b) the mandatory registration (non-Muslim marriages) cannot be necessarily implied from the definition of a 'dependant' in s 2(3) of the ESSA; and

(c) the meaning of a 'dependant' in s 2(3) of the ESSA does not distinguish between a Muslim widow and non-Muslim widow. As such, the mandatory registration (non-Muslim marriages) cannot be required for a widow of an insured person in the definition of a 'dependant' in s 2(3) of the ESSA.

[16] Secondly, Parliament has amended the definition of 'dependant' in s 2(3) of the ESSA as follows:

(a) the Employees' Social Security (Amendment) Act 1979 (Act A450);

(b) the Employees' Social Security (Amendment) Act 1987 (Act A675);

(c) the Employees' Social Security (Amendment) Act 1992 (Act A814); and

(d) the Employees' Social Security (Amendment) Act 2004 (Act A1232).

There is a rebuttable statutory presumption that the legislature is deemed to know existing law, namely LRA, when Act A450, Act A675, Act A814 and Act A1232 (four amendments) are passed — please see the judgment of Gopal Sri Ram JCA (as he then was) in the Court of Appeal case of *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719 at p 754. If Parliament had intended to insert the mandatory registration (non-Muslim marriages) in the definition of 'dependant' in s 2(3) of the ESSA, Parliament would have expressly done so by way of any one of the four amendments. Parliament however did not do so.

[17] Additionally or alternatively, ESSA is a social piece of legislation with the purpose of providing 'social security in certain contingencies' — please see the title (ESSA). A purposive interpretation of the definition of 'dependant' in s 2(3) of the ESSA does not require the imposition of the mandatory registration (non-Muslim marriages).

[18] The literal and purposive interpretation of the meaning of 'dependant' in s 2(3) of the ESSA as explained in the above paras 15–17, is supported by Su Geok Yiam J's judgment in *Lam Kun Tai* at [43], [44] and [48], as follows:

> [43] *I am of the view that by reading and interpreting the words used by Parliament in s 2(3) of the ESSA 1969 reproduced earlier, there is no requirement for the respondent to prove that her marriage to the deceased before his demise is a valid marriage solemnised and registered under the LRA.*
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> [44] *This is because s 2(3) of the ESSA 1969 does not refer to a 'lawful widow' or a 'lawful widower' of a deceased insured person and hence, in my respectful view, there is no justification for the court to insert the word 'lawful' in front of the words 'widow or widower' in that section. It follows, therefore, that as long as a claimant under the ESSA 1969 can prove that he or she is a widow or widower or a child of a deceased insured person, the claimant is a 'dependant' within the meaning of that section.*
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> ...
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> [48] *In my view, since the ESSA 1969 is a piece of social legislation, which was introduced to secure social and economic justice to all the employees insured under the ESSA 1969, the word 'widow' in s 2(3) of the ESSA 1969 ought to be interpreted literally and purposively in order to serve justice to the insured person in order to enable his relatives who are specified under the section to obtain the survivors' pension benefit conferred under the ESSA 1969 in the event of his demise*. (Emphasis added.)

[19] I am of the view that SOCSO's reliance on ss 5(4), 22(4) and 27 of the LRA is misplaced. My reasons are as follows:

(a) as stated in the title (LRA), LRA is only concerned with the following matters:

  (i) the requirement of monogamous non-Muslim marriages;

  (ii) the solemnisation of non-Muslim marriages;

  (iii) the mandatory registration of non-Muslim marriages; and

  (iv) the amendments and consolidation of the law relating to divorce among non-Muslims;

(b) there is no provision in LRA regarding social security. It is therefore clear that LRA does not concern with social security (which is provided by ESSA) — please refer to *Lam Kun Tai* at [49]–[51] and [55]–[65].

[20] In view of the purpose and scope of LRA as explained in the above para 19, cases decided regarding LRA are not applicable in the construction of the definition of 'dependant' in s 2(3) of the ESSA. In a similar vein, Mr Balwant's article does not concern social security matters, let alone the meaning of 'dependant' in s 2(3) of the ESSA.

[21] It is to be noted that *Joremi bin Kimin* and *Tan Siew Sen* are cases on

dependency claims under s 7(2) of the Civil Law Act 1956 and do not concern social security — please see *Lam Kun Tai* at [66]–[70].

[22] Regarding *Koi Lean Hua* :

(a) Su Giok Yam J has declined to follow *Koi Lean Hua* in *Lam Kun Tai*, at [71]; and

(b) premised on the reasons elaborated in the above paras 15 to 21, with respect, I follow *Lam Kun Tai* and not *Koi Lean Hua*. It is trite law that from the view point of the stare decisis doctrine, one High Court is not bound by a decision of another High Court — please see the judgment of Ong Hock Thye FJ (as he then was) in the Federal Court case of *Sundralingam v Ramanathan Chettiar* [1967] 2 MLJ 211 at p 213.

EFFECT OF CHAI SIEW YIN (FC'S DECISION)

[23] In view of the *Chai Siew Yin* (FC's decision), the Court of Appeal's judgment in *Chai Siew Yin* is not a binding precedent. Having said that, there is no written judgment regarding *Chai Siew Yin* (FC's decision).

[24] When a court delivers a decision but there is no written judgment regarding the decision, the decision is not a binding precedent under the stare decisis doctrine. It is decided in *Syahin Hafiy Danial bin Soh Ahmad Luptepi Amin v Mansur bin Yunus & Anor* [2019] MLJU 914 at [13]–[15], as follows:

> [13] In support of this appeal, the defendant's learned counsel has referred to the following:
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> (a) sealed judgments and orders as well as draft judgments and orders of the Court of Appeal, High Court and sessions court of other cases (*other cases*);
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> (b) written submission filed in the other cases; and
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> (c) memorandum of appeal and notice of appeal filed in the other cases.
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> [14] *I am not able to accept the reference by the defendant's learned counsel to other cases except if written judgments have been delivered in the other cases. This is because from the view point of the stare decisis doctrine, only the ratio decidendi ascertained from a written judgment of a superior court, has binding or persuasive effect. I refer to the judgment of Raja Azlan Shah FJ (as His Majesty then was) in the Federal Court case of Malaysia National Insurance Sdn Bhd v Abdul Aziz bin Mohamed Daud* [1979] 2 MLJ 29 *at 32 as follows —*
>
> > *However, I would once again emphasize what has so often been said before, that precedents are not to be slavishly followed; a case may be followed only for its strict ratio decidendi*. (Emphasis added.)
>
> *Without a written judgment of a previous case, the court cannot ascertain the ratio decidendi of the previous case by considering the following three matters ('three matters'):*

A

(a) *the material facts of the case which give rise to the issue to be decided by the court;*

(b) *the rule of law which has been applied by the court to resolve the issue; and*

(c) *the reasoning of the court in applying the rule of law to decide the issue in question.*

B

[15] *In Datuk Haji Harun bin Haji Idris v Public Prosecutor* [1977] 2 MLJ 155*, the appellant's learned counsel referred to a digest, summary or extract of a previous decision, Heah Chin Kim. Suffian LP held as follows in the Federal Court in Datuk Haji Harun at p 170:*

C

> *The full judgment in Heah Chin Kim [1954] MLJ xxxiii is not available and it is impossible for us to determine its ratio decidendi.* (Emphasis added.)

Based on Datuk Haji Harun, no reliance can be placed on a digest, summary or extract of a previous decision because the court cannot extract the ratio decidendi of the previous case by considering the there matters. (Emphasis added.)

D

OUTCOME OF THIS APPEAL

[25] Premised on the above reasons, SSAB's decision is upheld and this appeal is dismissed with costs.

E

Appeal dismissed with costs; board's decision affirmed.

Reported by Mohd Kamarul Anwar

F

G

H

I